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# LEGAL EXEGESIS OF THE CUSTOMARY COURT OF APPEAL JURISDICTION UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA, 1999 AGAINST EMERGING TRENDS

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***Abstract:*** *Section 282(1) of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999) vests appellate and supervisory jurisdiction on the Customary Court of Appeal (CCA) on civil matters involving questions of customary law. Section 282(2) of the CFRN, 1999 grant the State House of Assembly (SHA) the vires to prescribe additional jurisdiction on the CCA by prescribing questions it can determine. Pursuant to this, some SHA have conferred original jurisdiction on the CCA contrary to the intendment of section 282(1) of the CFRN, 1999. This article adopts desk-based method in interrogating the jurisdiction of the Customary Court of Appeal under the CFRN, 1999. It examines decisions of appellate courts with the aim of determining whether or not these decisions are a stultification of the jurisdiction of the CCA or adherent to constitutional prescription? It argues that the act of conferring original jurisdiction by some SHA on the CCA runs afoul of section 282(1) of the CFRN, 1999. It discusses challenges inherent with the purportedly conferred original civil jurisdiction of the CCA hinged on the composition requirement of the CCA under the CFRN, 1999 and appeals procedure. It recommends constitutional amendment as a way to addressing the quagmires.*

***Keywords:*** *Court; Constitution; Customary court of Appeal, Jurisdiction, Justice, Nigeria*

## 1. Introduction

Sections 6(5) (h) (i) 265, 280 of the CFRN, 1999 established the Customary Court of Appeal as one of the Superior Courts of Record in Nigeria (SCR). It is a SCR because it keeps record of its proceedings and has the power to punish for contempt and impose fines. Section 282(1) of the CFRN, 1999 vest appellate and supervisory jurisdiction on the CCA over decisions of the Customary Court or their equivalent on matters relating to customary law. Section 282(2) of the CFRN, 1999 empowers the State House of Assembly (SHA) to confer additional jurisdiction on the CCA of a State by prescribing questions which the CCA can adjudicate upon. By the clear and unambiguous phraseology of section 282(1), the CCA whether of the State or the Federal Capital Territory, has and exercises only appellate and supervisory jurisdiction. Pursuant to the power conferred on the various SHA to confer additional appellate and supervisory jurisdiction on the CCA, most SHA in the federation, have enacted laws to this effect.

The SHA, in conferring additional jurisdiction on the CCA, have by the various laws, purportedly conferred original civil jurisdiction on the CCA despite the clear provision of section 282(1) of the CFRN, 1999 and the peculiarity of the CCA. For instance, section 16 (1) (d) the Oyo State Customary Court of Appeal (Amendment) Law, 2018 which amended Section 39 of the Oyo State Customary Court of Appeal Law, 2008 conferred original civil jurisdiction on the CCA on probate

matters of deceased persons who died intestate and lived under the customary law. The question is: considering that probate is a subject of original jurisdiction exercised by the Chief Judge under the Administration of Estate Laws of the various State and the CCA under the Constitution, has only appellate and supervisory jurisdictions, can the SHA conferred jurisdiction on the CCA beyond the prescription of the Constitution? Also, regarding appeals to the CCA, matters of fact and evidence which are clearly beyond the scope of matter relating to customary law where they form a ground of appeal, does the CCA has the vires to adjudicate over same? These issues especially the second one has attracted considerable judicial attention with the outcome that it is a stultification of the jurisdiction of the CCA.

This paper, adopts desk-based method in interrogating whether the original civil jurisdiction purportedly conferred on the CCA by the various State Laws does not run afoul of the express provisions of the CFRN, 1999 and the inherent challenges in conferring such jurisdiction on the CCA. It examines judicial stance towards the jurisdiction of the CCA and answers the question whether the pronouncements of the appellate court amounts to an unwarranted stultification of the jurisdiction of the CCA or adherence to constitutional prescription. The paper rely on primary data such as the CFRN, 1999, Oyo State Customary Court of Appeal Law, 2008, Oyo State Customary Court of Appeal (Amendment) Law 2018, and case law; as well as secondary data such as articles in learned journals, and online materials. These data are subject to jurisprudential analysis. Regarding scope of the paper, while it is correct that the CFRN, 1999 creates the Customary Court of Appeal of the Federal Capital Territory, and Customary Court of Appeal of a State, the exegesis in this paper is mainly focused on and limited to the CCA of a State. The rationale is that it is this one that legislative steps taken by some SHA have sprung constitutional dilemmas requiring critical rigorous interrogation.

By structure, the article is divided into seven sections. Section one is the introduction. Section two contains conceptual clarification. Section three examines the evolutionary journey and nature of the CCA. Section four examines judicial stance towards the jurisdiction of the CCA and matters arising. Section five examined the jurisdiction of the CCA and evolving trends. Section six contains the way-forward in addressing the identified challenges revolving around the jurisdiction of the CCA and its general practice and procedure; while section seven contains the conclusion and recommendations.

## 2. Conceptual Clarification

For the sake of clarity of presentation and precision in understanding, there are certain concepts used in this work that require clarification. Thus, this section of the work is dedicated to this end. These concepts include jurisdiction, custom and customary law.

### *i. Jurisdiction*

Jurisdiction is a term of great significance in adjudication. This is because it is to adjudication, what blood is to the body as was held in *Ladejobi v Odutola Holdings Ltd* (2002). Underscoring its meaning, effects in adjudication and significance, the Supreme Court of Nigeria (SCN) in *Egharevba v Eribothe* (2010) held that:

> Jurisdiction is a term of comprehensive import embracing every kind of judicial action. It is the power of a court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Jurisdiction also defines the power of the court to inquire into facts, apply the law, make decisions and declare judgments. It is the legal right by which Judges exercise their authority. Jurisdiction is equally to the court what a door is to a house. This is why the question of a court's jurisdiction is called a threshold issues, because it is at the threshold of the temple of justice. Jurisdiction is a radical and fundamental question of competence, for if the court has no jurisdiction to hear the case, the

> proceedings are and remain a nullity however well conducted and brilliantly decided they might have been. A defect in competence is not extrinsic but rather intrinsic to adjudication.

The above adumbration of the SCN is instructive and unassailable. As to when a court is said to have the requisite jurisdiction over a dispute, the SCN had laid down the indicia in its foremost decision in *Madukolu v Nkemdilim* (1962) when it stated thus:

> A court is competent when it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction and the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction. The court further held that any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided; the defect is extrinsic to the adjudication.

Deducible from the foregoing is that, a court is said to have jurisdiction when it is composed by the prescribed number of judge/justice and their qualification is intact; the subject matter of the disputes comes within its adjudicatory circumference; due process of the law including but not limited to fulfilment of condition precedent, has been fulfilled before the initiation of the case; and there is absence of any feature that prevents the court for adjudicating over the case presented as was decided in *AG Ogun State v Coker* (2002). In *National Electoral Commission & Anor v Izuogu* (1993) it was decided that the statute that creates a court, specify its jurisdiction and any jurisdiction that is not expressly given to a court, is deemed to have been taken away from the court as was held in *National Electoral Commission & Anor v Izuogu* (1993). As a result, neither the court nor litigants can confer or sequestrate the jurisdiction of court *Akinkunmi Shoyoye & Anor* (1977). The issue of jurisdiction is a threshold matter which could be raised anyhow and at any stage in the proceedings even on appeal at the SCN for the first time *Ibori v Ogboru* (2005). It is trite law that once the question of jurisdiction is raised, the court must keep at abeyance, further proceedings and determine the question one way or the other as was decided in *Triumph Assurance Co. Ltd v Fadlallah & Sons Ltd* (2000). The rationale is that where a court adjudicate in want of jurisdiction, irrespective of how well the proceedings were conducted, it is an exercise in futility *Okolo v Union Bank of Nigeria Ltd.* (2004). court have examined its jurisdiction and finds that it lack the requisite jurisdiction, the proper order for it to make is an order striking out the suit and not dismissal so as to give the party where possible, the opportunity to remedy the defect and present the matter before the appropriate court as was held in *DIN v Attorney General of the Federation* (1986). The jurisdiction of court over a dispute must exist and subsist from the time it became seised of the matter till it delivers it judgment in the action which means that there must be a break in the chain of jurisdiction *Felix Onuora v Kaduna Refining and Petrochemical Co. Ltd* (2005). In determining its jurisdiction, the court must have recourse to the claim of the claimant *Nigerian Deposit Insurance Corporation v Central Bank of Nigeria* (2002) and the law that determines the jurisdiction of the court is the law as at the time the cause of action arose and not when the adjudicatory machinery was set in motion *Ibafon Co Ltd v Nigerian Ports Plc.* (2001).

With regards to types, the jurisdiction of a court could be subject matter as exemplified by the provisions of Section 251 and 254C of the CFRN, 1999 which has vested exclusive original civil jurisdiction over a spectrum of subject matter on the Federal High Court and National Industrial Court of Nigeria respectively. Thus, only these courts have the requisite jurisdiction to entertain those subject matter matters in the event of any dispute. Jurisdiction could also be monetary as in where the law specify a particular monetary threshold which a court can entertain dispute over. Once the amount

involve, is above the monetary limit upon which a court can adjudicate over, the court lacks the jurisdiction. There is also territorial jurisdiction which is the geographically location within which a court is competent to entertain disputes from. For instance, in Nigeria, the federal courts (i.e. the Supreme Court, Court of Appeal, Federal High Court, and National Industrial Court of Nigeria) have nationwide jurisdiction although they are locate in various judicial division for the purposes of administrative and adjudicatory convenience *Francis O Johnson & Anor. v. Comrade Emma Eze & Anor*. (2021). The High Court of State has its territorial jurisdiction limited to matters arising within the State or if the disputes arose therefrom or the litigant are domicile therein. A court's jurisdiction could also be either original (i.e. with regards to disputes it can adjudicate upon as a court of first instance). This original jurisdiction could either be exclusive or shared. It is exclusive when it is only that court and no other, can sit over a particular dispute at first instance while share when two or more courts can entertain the dispute as first instance. The jurisdiction could also be appellate, that is where the court entertain appeals from the decision of an inferior court.

***ii. Custom***

The word 'custom' literally, grammatically, or ordinarily means; tradition, practice; usage; observance; way; convention; procedure; ceremony; ritual; ordinance; form; formality; fashion; mode; manner; shibboleth; unwritten rule; way of doing things; formal; praxis; style; etiquette; routine; habit; usual; rite; Solemn; unwritten code; conventional social behaviour; etc. Custom is the way of life of a people rooted in their beliefs and idiosyncrasies (Mohita, 2022). Custom takes birth from the habits and natural dealings of the people in a society; by their unconscious adoption of a certain rule of conduct and its sanctity is based on nothing but its long continued use and recognition by the people. In *Yinka Folawiyo & Sons Ltd. v. Hammond Projects Ltd* (1978) it was held that custom is a practice of usage which by common adoption and acquiescence, and by long and unvarying habit, has become compulsory, and has acquired the force of law with respect to the place or subject matter which it relates. Custom is limited by territorial jurisdiction. Unless a person who has subscribe to a particular custom is bound by its dictates during his life time and may even have his estate administered in accordance with that custom. Custom occupies a very important place in regulation of human conduct in almost all the societies, irrespective of the countries to which they belong. It is one of the oldest sources of law-making, but with the progress of the society its significance gradually diminishes and legislations and judicial precedents become the main source of law, replacing the influence of Custom (Bhattacharyya, 2020).

A custom is a continuing course of conduct which may by the acquiescence or express approval of the community observing it, has come to be regarded as fixing the norm of conduct for members of society. When people find any act to be good and beneficial, apt and agreeable to their nature and disposition, they use and practice it from time to time, and it is by frequent use and multiplication of this act that the custom is made. Custom is a rule of conduct which is spontaneously observed by the society as a tradition, habit and usage, but not in pursuance of law. Custom is created by the people, by their unconscious adoption of a certain rule of conduct whenever the same problem arises for solution and its authority is based on nothing but its long continued use and recognition by the people. Custom is some kind of special rule which is followed from time immemorial.

***iii. Customary Law***

Customary law is specie of law existing and recognised in Nigeria as a valid system of law with binding and enforceable *Bakare Alfa & Ors. v. Arepo* (1963). It consists of the customs and traditionally beliefs of an indigenous community which has been applied over a significant period of time to the extent that it has become a taboo/abomination or even an offence to conduct oneself contrary to their dictates *Salau v. Aderibigbe* (1963). Their observation by all and sundry is obligatory and failure usually

attracts sanctions. Asein has opined that customary law includes those laws that is indigenous to the native communities (Asein 2021, 18). It is a body of rules regulating rights and imposing correlative duties, being a rule or body of rules which obtains and is fortified by established usage and which is appropriate and applicable to any particular cause, matter, dispute, issue or question (Ogbu 2013, 90). According to Elias (1956, 55) the customary law of a given community is the body of rules which are recognised as obligatory by members on the principle of their social imperative and it is a dynamic social conduct, an accepted behaviour which the vast majority of its members regards as absolutely necessary for the common weal. According to (Emiola 2011, 6) referencing Justice Ollenu, asserts that not every form of social conduct fits the definition of customary law even if it is well established as it will not pass the test of law where it merely excites the displeasure or contempt of the society when violated. This implies that the present of sanction is necessary for a generally accepted social conduct to fit into the societal mould of customary law.

Thus, in espousing the nature and status of customary law, the SCN in *Kharie Zaidan v. Fatima Khalil Mohssen* (1973) elaborately defined customary law thus:

> Customary law is a system of law, not being the common law (of England), and not being a law enacted by a competent legislature in Nigeria, but which is enforceable and binding within Nigeria s between the parties subject to its sway.

According to Kalajo (2001, 1) has asserted that customary law may conveniently be defined as those rules of conduct which the persons living in a particular locality have come to recognise as governing them in their relationships between one another and between themselves and things; it is an ancient rule of law binding on particular community and which rule do change with the times and rapid development of social and economic conditions.

From the foregoing, Emiola (2011, 8) has opined that for any rule to be regarded as customary law, three elements must be present in it. First, it must be a rule of conduct, stipulating what may or may not be done, secondly, it must be a rule prescribed by a competent authority empowered and recogniseable as capable of making such law and finally, it must be enforceable and accompanied by sanction for its violation. Customary law is not only law but the organic law of any indigenous society. Obaseki JSC (of blessed memory) underscored this point in *Oyewumi v. Ogunesan* [1990] when he authoritatively opined that "customary law is the organic or living law of the indigenous people of Nigeria regulating their loves and transactions. It is organic in that is not static; it is regulatory in that it controls the lives and transactions of the community subject to it. It is said that the custom is a mirror of the culture of the people." Customary law is a custom that has attained the force of law by having prohibitive prescription and well defined repercursionary effect in the event of breach. For custom to have the force of law, it must be approved by consent of those who follow it as was held in *Okonkwo v. Okagbue & Ors* (1994). It is potent law which is not subservient to any other existing or recognised system of law. By it characteristic nature, customary law is unwritten as was held in *Lewis v. Bankole* (1908) and it is recognised as law by the members of an ethnic group. It is a mirror of accepted usage as was held in *Owoniyin v. Omotosho* (1961).

It should be noted that customary law is customary because it grows from the customs and conducts of the people and is based on the tested tradition of the particular society concerned. The tradition are handed down from one generation to another and are abandoned when they had outlived their usefulness and ceases to command the obedience they deserve due to change in times and season. Customary law has six unique features which is that it is unwritten, flexible, it is based on the custom of the people, it is popular law which commands common allegiance from the majority of the people and, it is a moral law founded on the principles of universal rules of justice and fairplay. Even after a

customary law has been proved to be part of the custom of a group of people, it is not always applicable. Customary law is not applicable in criminal cases as long as it is not contained in any written law as stated by section 36(12) of the constitution. For customary law to be enforceable, the court in *Guri v. Hadeija Native Authority* (1959) laid down three conditions it must fulfilled which are that the rule must not be repugnant to natural justice, equity and good conscience, the rule must not be incompatible with any law being in force for the time being. It must not be incompatible either directly or by implication, and the rule must not be contrary to public policy.

**3. Evolutionary Journey and Nature of the CCA**

From the outset, the point should be made that the CCA is a brain child of necessity as it is often said and truly so, necessity is the mother of invention. The CCA was established in a bid to aid the development of customary and adjudication of customary matters which had been unsuitable for adjudication by the regular court. The development of Nigeria's judiciary could be compartmentalised into: pre-colonial, colonial and post-colonial eras as opined by Elias (1963, 4). During the pre-colonial era, the various indigenous communities in Nigeria had various means of dispute resolution. In the South West and South East, comprising the Yorubas and Igbos, disputes were resolved through a structured informal traditional court system wherein they were submitted to the family head, advances to the head of the compound and if need be, to the King until they were resolved. In the North, there was a formalised traditional dispute resolution system hinged on the Islamic system of sharia law which is predominant there Allot (1962, 39). The Alkali system with the Emir being the apex appellate authority prevailed. By 1842, the Native Court System (NCS) was the main system of justice administration in Nigeria (Ogbu 2013, 219). These courts, in the course of justice administration, fashioned civil and criminal procedure rules, sentencing guidelines and other matters to aid their functionality. These NCS is what has transmogrified to the present day customary/district courts and CCA. By 1843-1913 during the colonial era, the British through a combination of Foreign Jurisdiction Act of 1843 and 1893 established law under which various courts were set up (Obilade 2018, 6). By 1954, the Court of Equity was established by the colonialist in some Southern parts of Nigeria including Brass, Opobo, Brass, Benin and Okrika. The Judges of this court were the consular or administrative officer, principal agents of trading firm. The Royal Niger Company (RNC) also established more courts, pursuant to a Royal Charter granted to it in 1886 to govern and administer justice within the area it is located (Obi-Okoye 1996, 4). The Court established by the RNC, in their adjudicatory exercise, were expect to have regards to the customs and laws of the class or tribe or nation to which the disputants respectively belong, especially with respect to the holding, possession, transfer, and disposition of lands and goods, and testate or intestate succession, marriage, divorce and legitimacy and other rights (Asein 2021, 211). The advent of colonialism brought with it the English court system which was aimed at protecting the commercial interest of the colonialist owing to disputes that might arise between merchants especially after the infamous treaty of cession was made in 1861. By 1862, the First Governor of the colony of Lagos had established several courts including the Police Magistrate, Commercial court, and the Slave Commission courts (Umeh 1989, 39-40). In 1863, by Ordinance No 11 of 1863, the Supreme Court of Lagos was established, it had both civil and criminal jurisdiction. Upon amalgamation of the Southern and Northern Protectorates, a new Supreme Court was established without any significant changes in terms of powers and functions by the Supreme Court Ordinance of 1914 and in 1954, owing to the defects of the subsisting system, there was an overhaul. Upon independence on the 1st of October, 1960 but by 1st of October, 1954, Nigeria had become federation with federate units and a central government (Malemi 2009, 166). Under the 1963 Independence Constitution, various courts were established including the now federal Supreme Court which became the apex court, and entertained appeals from the High Courts of the various Regions which were by law, allowed to establish regional court of appeal if needed (Asein 2021, 224-225).

In 1979 when a new constitution was enacted, there was a reorder of the courts with the creation of the Supreme Court, Court of Appeal, Federal High Court, High Court of State, Sharia Court of Appeal, and Customary Court of Appeal. Thus, it was under the 1979 Constitution of the Federal Republic of Nigeria that the Customary Court of Appeal was conceived and birthed. The aborted 1989 Constitution retained the same arrangement which is duplicated under Section 6(5) of the CFRN, 1999 (Asein 2021, 205). Thus, under the CFRN, 1999, the CCA is established as a Superior Court of Record having appellate and supervisory jurisdiction over Customary Court in relation to civil matters involving questions of customary law. The CFRN, 1999 provides for the mandatory establishment of the Customary Court of the Federal Capital Territory, Abuja while the establishment of the same court for any of the federating States is optional sequel to section 280 of the CFRN, 1999. The CCA of a State is composed of the President and such number of judges as may be prescribed by a law of the House of Assembly of the concerned State.

The first CCA of a State was established in Nigeria by Plateau State on the 2nd of October, 1979 by the Customary Court of Appeal Law of Plateau State. Since then, several States in Nigeria including but not limited to Oyo, Edo, Rivers, Ogun, Benue, Delta, Abia, Imo, Ebonyi, Kaduna, Nasarawa, Taraba, Cross River, Bayelsa States have established CCA. Appointment of a person as the President of the Customary Court of Appeal of a State is made by the Governor upon the recommendation of the National Judicial Council (NJC), subject to confirmation of such appointment by the House of Assembly. While appointment of judges follow the same process but without the additional requirement of confirmation. For a person to be appointed the President of Judge of the CCA, he must be a legal practitioner and must have been so qualified for at least ten years and in the opinion of the NJC, he has considerable knowledge and experience in the practice of customary law. Surprisingly, there is no indicia provided in the constitution for ascertaining the requirement of having considerable knowledge and experience in the practice of customary law which is the basis for appointment. The CCA is a specialised court meant for the adjudication of disputes relating to custom. Its jurisdiction is special and exclusive.

**4. Judicial Interpretation of Section 282(1) of the CFRN, 1999 and Matters Arising**

The jurisdiction conferred on the CCA has been subject of judicial interpretation owing to the controversy it is shrouded in. the extent of the jurisdiction has been a legal dragnet. With regards to judicial interpretation of section 282(1) of the CFRN, 1999 in relation to the jurisdiction of the CCA, Dudson and James (2020, 41-48) have opined that "despite the enormous benefit derived from the establishment of the Customary Court of Appeal in States that have established them, a trend has emerged that tends to challenge the very existence of the Court as a superior court of record in in Nigeria." The trend being referred to by the duo is the judicial pronouncement on the confines of the jurisdiction of the CCA as provided under Section 282(1) to the effect that the CCA can only determine an appeal which the ground (s) thereof do not deal with evaluation of evidence or the admissibility of evidence even if the appeal arises from customary law issues such as dissolution of customary law marriage, succession under customary law, customary land law tenure, etc. notwithstanding that the appeal emanates from trial customary court. In *Pam v. Sule Gwom* (2002) the Supreme Court Per Ayoola JSC (as he then was) on the issue whether the CCA can entertain appeal dealing with issues other than question of customary law held that:

> Where the decision of the Customary Court of Appeal turns purely on facts or on question of procedure such decision is not, with respect, a question of customary law, notwithstanding that the applicable law is the customary law… where the parties are in agreement as to what the applicable customary law is and the Customary Court of Appeal does

not need to resolve any dispute as to what the applicable customary law is, no decision as to any question of customary law arises.

The issue that arises is when can an action be said to constitute a question of customary law? In giving a guide to this question, the SCN have held Per Ayoola JSC (as he then was) thus:

> I venture to think that a decision is in respect of a question of customary law when the controversy involves a determination of what the relevant customary law is and the application of Customary Law as ascertained to the question in controversy. Where the parties are in agreement as to what the applicable customary law is and the Customary Court of Appeal does not need to resolve any dispute as to what the applicable customary law is, no decision as to any question of customary law arises. However, when notwithstanding the agreement of the parties as to the applicable customary law, there is a dispute as to the extent and manner in which the such applicable customary law determines and regulates the right, obligation, or relationship of the parties having regard to facts established in the case, a resolution of such dispute can in my opinion be regarded as a decision with respect to a question of customary law. Where the decision of the Customary Court of Appeal turns purely on facts or on question of procedure, such decision is not with respect to a question of customary law, notwithstanding that the applicable law is customary law.

Thus, in *Edo State v. Aguele* (2006) the Court of Appeal held that "for an appeal to be competent before the Customary Court of Appeal, the grounds of appeal must relate to and raise question of customary law… it is not the subject matter of the action… it is rather the grounds of appeal… that will confer the necessary jurisdiction on the appellate court." In *Golok v. Diyal Pwan* (1990) reverberating the position above, as to whether the Court of Appeal can entertain an appeal from the decision of the CCA other than one that relate to question of customary law, the Court of Appeal emphatically held that appeals lie from the decision of the CCA to it on question of customary law alone, and none other *Joseph Ohia v. Samuel Akpoemonye* [1999]. In *Samuel Onah v. Samuel Odeh* (2023) the Court of Appeal was confronted with the vexed issue of whether or not the appellate jurisdiction of the CCA is limited to determination of questions of customary law in civil proceeding from the trial Area or Customary Courts. In this case, the appellant had filed a suit against the respondent before the Upper Area Court, Oju, Benue State seeking declaration of title to land and an order of perpetual injunction. At the conclusion of trial, the trial court entered judgment in favour of the claimant/appellant. Being dissatisfied by the judgment, the respondent filed an appeal before the Benue State CCA on a lone ground of appeal that the "the judgment of the trial Upper Area Court, Oju is against the weight of customary justice and it is unwarranted and unreasonable." The parties filed and exchanged brief of argument and it its judgment, the CCA upheld the appeal of the respondent and the judgment of the trial Upper Area Court was set aside, and in its stead, the claims of the claims of the claimant/appellant against the respondent/defendant were dismissed for lacking in merit. The appellant being dissatisfied, appealed to the Court of appeal contending that the CCA lacked the jurisdiction to have entertained the appeal as it does not fall within the province of section 282(1) and (2) which has circumscribed the appellate jurisdiction of the CCA to determination of questions of customary law. The Court of Appeal in its judgment, upheld the appeal and set aside the judgment of the CCA. The Court of Appeal came to the conclusion that in law, weight of evidence and or evaluation of evidence are not questions of customary law that would enable an appellant to appeal to the Benue State CCA from a decision of the trial Upper Area Court. It follows therefore, the sole ground of appeal before the CCA did not satisfy the requirement of section 282(1) of the CFRN, 1999, in that it did not raise any question of customary law *Yakubu & Anor. v. Ali & Ors.* (2018). The reason for this justifiable restrictive interpretation is not an attempt at stultifying the jurisdiction of the CCA but compliance with constitutional provisions. No court, can through interpretation, expand its own jurisdiction or that of another court contrary to the law

that laid down the jurisdiction of the court in the first place. The implication of the foregoing is that, where an appeal from the decision of an Area or Customary Court deals with questions of customary law and evaluation of evidence, the appeal has to be split to the CCA and High Court. While this outcome is cumbersome and worrisome, that is what is at present, obtainable since it is a matter of constitutional provision. The Court of Appeal had noted that to prevent the quagmire noted above, there is a need for a holistic approach to be adopted with the outcome that a challenge to evaluation of evidence or the admissibility of evidence should be taken even by a CCA in an appeal as long as it is intrinsic to a challenge to the outcome of the decision on a question of customary law that had been determined and is before the CCA *Samuel Onah v. Samuel Odeh* [2023] The rationale for this proposal of the Court of Appeal is that "it will be tidier and expedient to avoid a situation of split litigation in different courts on same suit on judgement." The Court of Appeal further reasoned that the fact that at present, the CCA is composed of legal practitioners who are trained and learned in matters of evaluation and admissibility of evidence, such evidential matters, should be handled by them. To achieve this lofty goal, the Court of Appeal rightly proposed the amendment of the CFRN, 1999 to expand the jurisdiction of the CCA to include entertaining matters of evidence arising from decisions of Area and Customary Court on questions of customary law. It is our view that this is the only way to address the issue bearing in mind the case of the National Industrial Court of Nigeria which was omitted under section 6(5) of the CFRN, 1999 which chronicled the SCR in Nigeria. The enactment of the National Industrial Court Act, 2006 to cure this omission was adjudged a constitutional affront and aberration as it was an unlawful attempt to amend the constitution through an ordinary Act of the National Assembly as opposed to an Act of Constitution dimension *Oloruntoba-Oju & Ors v. Dopamu & Anor* [2008]. Thus, it was the enactment of the CFRN, 1999 (Third Alteration) Act, 2010 that laid the issue to rest *Skye Bank Plc v. Victor Anaemem Iwu* [2017]. Thus, it is only through constitutional amendment that the jurisdiction of the CCA can be legally enhanced and fortified as it is now desired. Thus, the court to the jurisdiction of the CCA, is not a stultification of its jurisdiction but merely adhering to the express provision of the CFRN, 1999.

**5. The CCA Jurisdiction and Emerging Trends**

From the discussion in the preceding sections, it has been observed and rightly so that the section 282(1) and (2) of the CFRN, 1999 which creates the CCA, empowers the various SHAs to confer additional jurisdiction. Despite the Constitution unambiguous specifying that the CCA shall have and exercise appellate and supervisory jurisdiction only, most SHAs, have gone ahead to craftily but insolently conferring original civil jurisdiction on the CCA. For instance, Section 16 of the Oyo State Customary Court of Appeal (Amendment) Law, 2018 has conferred original civil jurisdiction of the CCA to entertain probate matters of deceased person who died intestate and lived under customary law, any question of customary law regarding a marriage concluded in accordance with customary law, etc.

From the foregoing, it is trite that the CCA as created under the CFRN, 1999 does not have nor can exercise original jurisdiction. While it is conceded that the CFRN, 1999 gives the various SHAs the power to create addition jurisdiction for the CCA, it is vehemently contended that the additional jurisdiction to be conferred must be in strict consonance with the express provision of the Constitution that created the CCA and outlined its initial jurisdiction. The SHAs cannot expand the subject matter jurisdiction originally conferred by the Constitution beyond the boundary already set. Thus, the jurisdiction purportedly conferred on the CCA of Oyo State pursuant to section 16 of the Oyo State Customary Court of Appeal (Amendment) Law, 2018 to entertain probate matters of deceased person who died intestate and lived under customary law, any question of customary law regarding a marriage concluded in accordance with customary law, etc. is not only *ultra vires* the SHA of Oyo State but

illegal as the CCA, by extant provision of the Constitution, has only appellate and supervisory jurisdiction. The SHA lacks the vires to clothe the CCA with original jurisdiction which is neither contemplated nor conferred by the CFRN, 1999 that created the CCA. Only the CFRN, 1999 can expand the subject matter of any form of jurisdiction of a court created by it. Thus, pursuant to section 1(3) of the CFRN, 1999, the Oyo State Customary Court of Appeal (Amendment) Law, 2018 and all others in the same standing, which are inconsistent with the express provision of section 282(1) of the CFRN, 1999, are null and void to the extent of their inconsistency.

Moreover, for the CCA to be composed with regards to number, in any proceedings, it must consist of three judges of the court sitting. Decisions of the court, to be valid, has to be signed by three judges. The question is, when the CCA issues Letters of Administration (LA) following the vicissitude of the State High Court, the LA, must be signed by three judges of the CCA but in practice, it is only the President of the CCA that signs same as issued under his seal and mark. The irresistible and logical conclusion is that, the CCA by its nature, issuance of LA, is a matter which it is not only incompetent to handle but unsuitable. There is no contestation that no federating State in Nigeria, including the Federal Capital Territory, can have two probate Registry or Registrar as it is purportedly being surreptitiously done or attempted through the inclusion of original civil jurisdiction in the various CCA laws examined. Attempting to confer original civil jurisdiction on a court that sits in panel, aside from being a horrendous task which is seldom undertaken even by the Court of Appeal under exceptional circumstances when the course of justice demands, portrays a lack of firm understanding of the philosophical basis for the creation of the court. courts that sits in panel are not suitable for legal gymnastic associated with legal trials and associated matters which the State High Court, Federal High Court, NICN, are characteristically well suited for.

Since under Nigeria's law, private citizens have the right to protect the Constitution from violation by any person or by the government or its agent/agency, it is imperative that human rights groups/individual, take up public interest suit before the High Court to seeking the declaration of the obnoxious law as null and void owing to its inconsistency since it runs afoul of the constitution which is the supreme and organic law of the land.

## 6. Way-forward from the Quagmire

From the preceding section, it is clear that the Court of Appeal and the Supreme Court have firmly and rightly so in our view held that the jurisdiction conferred on the CCA under section 282(1) of the CFRN, 1999 is appellate and supervisory strictly in relation to question of customary law. Additionally, while the SHA is empowered to vest more jurisdiction on the CCA by virtue of section 282(2) of the CFRN, 1999, such additional jurisdiction cannot be beyond the ambits of section 282(1). Thus, the act of conferring original civil jurisdiction on the CCA by the laws enacted by some State House of Assembly, runs haywire the constitution hence, it is null and void to the extent of its inconsistency. Also, the jurisdiction constitutionally conferred on the CCA, is clearly on questions on customary law although, appeals from Customary and Upper Area Courts could result to the formulation of grounds of appeal beyond the scope of question of customary law for determination, such as matters of evidence or facts not strictly question of customary law. Where this happens, the stance of the court is that grounds of appeal other than questions of customary law, are beyond the jurisdictional competence of the CCA hence, it lacks the vires to be seised of same and resolve it. Under this circumstance, a litigant whose appeal contain grounds of question of customary law and maybe evidential matters, pure law or fact, is left with the only option of bifurcating the appeal to the CCA and the High Court. Of course, this regrettable situation impels severe but avoidable hardship on the administration of justice with the concomitant hardship being felt by the system, litigants and the society in general. The cost implication of prosecuting a bifurcated appeal arising from one dispute at the CCA and High Court could be enormous couple with the possible waste of judicious and judicial time is

excruciatingly exhausting. In fact, when one consider the fact that the composition of the CCA as prescribed under Section 281, CFRN, 1999 is made up of legal practitioners who have been so qualified for not less than ten years, the rationale for the bifurcation becomes apparently questionable. The composition of the CCA implies that the judges are presumed sufficiently knowledgeable with regards to the law and must have acquired sufficient skills in practice and procedure of adjudication and evidential matters, it is hardly justifiable rendering the court incompetent to be seised of and determine matters of law and fact pertaining to evaluation and admissibility of evidence. The above, is a constitutional conflagration foisted on the system and, it will require constitutional remedy to put-out. Hinged on the aphorism that justice delayed is justice denied and that access to justice should be seamless and straightforward, it is imperative that the issue of bifurcation of appeals based on grounds of law/fact on one hand and customary law on the other be constitutionally redressed.

## 7. Conclusions and Recommendations

Extrapolating from the above analysis, the CCA is a specialised court created to entertain appeals from the Area and Customary Court. Its jurisdiction is as specify under section 282(1) and (2) of the CFRN, 1999. The CCA under the Constitution, has only appellate and supervisory jurisdiction over the Area and Customary Courts. Thus, where an appeal from the Area/Customary Court involves both questions of customary law and evaluation/admissibility of evidence, the CCA can entertain the former but not the latter leading to bifurcation of such an appeal bearing in mind its burdensomeness and potential of wasting precious and scare judicial time and resources. It is trite law that the jurisdiction of a court is as provided by the statute or law that created the court and neither the parties nor the court or another court, can increase or decrease the jurisdiction; and, any decision rendered in want of jurisdiction, irrespective of how well the proceedings were conducted, it is a nullity. While the Constitution empowers the SHAs to confer additional jurisdiction on the CCA in accordance with the specification of section 282, Oyo State in particular, has conferred original jurisdiction on the Oyo State CCA contrary to what the CFRN, 1999 dictated. To this end, the CCA has been entertaining applications for and issuing LA which is an affront to the CFRN, 1999.

Considering that the challenges associated with bifurcation of appeals from decisions of Area/Customary Court involves both questions of customary law and evaluation/admissibility of evidence, couple with the fact that the judges of the CCA are legal practitioners with considerable years at the bar and experience, and the need to comply with the provision of the CFRN, 1999, it is therefore recommended that the provisions of section 282(1) and (2) of the CFRN, 1999 be amended to allow the CCA entertain any matter of fact or evidence arising from the determination of any question of customary law submitted to the CCA for determination arising from the decision of a trial Area/Customary Court.

Furthermore, since the provision of section 16 of the Oyo State Customary Court of Appeal (Amendment) Law, 2018 runs afoul of section 1(3) of the CFRN, 1999, there is a need for the High Court of Oyo State to declare them null and void and all actions already taken thereunder.

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